

Application No. 09/426,436
AMENDMENT G dated January 31, 2008
Reply to Office Action of July 31, 2007

REMARKS

After entry of the present amendment, claims 2-6, 8-26, and 29-30 are pending. Claims 2-6 and 8-19 are indicated as allowable. The Applicants thank the Examiner for the continued indication of allowable subject matter. Claims 20 to 30 stand rejected. Claims 27 and 28 are cancelled and the subject matter of these claims is now included in independent claim 24.

Submitted with this response is a Declaration of Mr. Thomas Verrette, Chief Financial Officer of Carico International, Inc., providing additional evidence of the commercial success of waterless cookware including all elements of claims 20 to 26 and 29 to 30. Applicants respectfully request reconsideration and allowance of all claims in light of the discussion, amendments, and Declaration presented herein.

I. Rejections To Claims 20-30 Under Section 112, Second Paragraph

Claims 20 and 24 were rejected as being indefinite due to the claim phrase “with little or substantially no added water.” Claim 23 was rejected for a similar reason. Applicants deleted these phrases from claims 20, 23, and 24.

Claim 24 was rejected as being indefinite for the phrase “a probe configured to be inserted through the at least one aperture.” Applicants amended claim 24 to define “a probe inserted through the at least one aperture.”

Claim 29 was rejected as being indefinite for the phrase “low profile.” Applicants have deleted “low” from the claim.

Accordingly, Applicants respectfully request withdrawal of the rejections to claims 20-30 under Section 112, Second Paragraph.

II. Claims 24 To 26 And 29 Are Not Obvious Over Barbour In View Of Bosch Because Not All Claim Limitations Are Disclosed Or Suggested

The Office Action rejected claims 24 to 26 and 29 as obvious over US 6,293,271 (Barbour) in view of DE 75 27 182 (Bosch). (Office Action, pp. 3-5.) Independent claim 24 is amended to include all features of dependent claims 27 and 28, which are both cancelled. As a result, independent claim 24 now defines, among other limitations, a waterless cookware utensil:

- wherein the knob assembly includes a holder removable from the knob assembly, the holder for selectively supporting the thermometer to the knob assembly; and
- wherein the knob assembly includes a retaining member configured to selectively cooperate with the holder to permit removal of the thermometer from the knob assembly when the holder is mis-aligned with the retaining member and to retain the thermometer to the knob assembly when the holder is aligned with the retaining member.

That is, independent claim 24 requires, among other limitations, at least three components – a knob assembly, a holder removable from the knob assembly, and a retaining member on the knob assembly that selectively cooperates with the holder. The cited references fail to disclose the combination of all three features on a cookware lid. At most, the combination of cited references only discloses two of the three components.

The Office Action admits Barbour fails to disclose a knob assembly, holder, and retaining member and relies on Bosch to disclose such features. (Office Action, p. 4.) The Office Action appears to suggest Bosch's plastic handle 12 is the claimed knob assembly and Bosch's collar 14 is the claimed retaining member. (*Id.*) However, the combination of Barbour and Bosch then fails to disclose the claimed holder, which the claims define as being removable from the knob assembly for selectively supporting the thermometer. The Office Action also appears to suggest the same knob assembly 12 of Bosch is also the holder, but then

such theoretical holder in Bosch would not be removable from the knob 12. The knob assembly can not be removable from itself.

Alternatively, if it is assumed that Bosch's plastic handle 12 is the claimed holder, then the combination of Barbour and Bosch fails to disclose the claimed knob assembly because the knob assembly is defined by the claims as being separate from the holder. In either case, the combination of cited references fails to disclose all claim limitations of amended claim 24.

Accordingly, Applicants respectfully request withdrawal of the rejections to claims 24 to 26 and 29.

III. Claim 30 Was Not Obvious Over Barbour In View Of Bosch And Further In View Of Schultz Because Not All Claim Limitations Are Disclosed Or Suggested

The Office Action rejected dependent claim 30 as obvious over Barbour in view of Bosch and further in view of WO 92/00033 ("Schultz"). (Office Action, pp. 5-6.) Claim 30 is dependent on independent claim 24 and, therefore, includes all the limitations of its base claim. As stated above, the combination of Barbour and Bosch fails to disclose all limitations of claim 24. The addition of Schultz fails to overcome the deficiencies discussed above in Barbour and Bosch.

Schultz is a non-English publication. Referring to the drawings and English language abstract, Schultz also fails to disclose or suggest a retaining member of a knob assembly configured to selectively cooperate with a holder to permit removal of the thermometer from the knob assembly when the holder is mis-aligned with the retaining member and to retain the thermometer to the knob assembly when the holder is aligned with the retaining member. Accordingly, Applicants respectfully request withdrawal of the rejection to claim 30.

IV. The Claim Phrase “Waterless Cooking At Sub-Atmospheric Pressure” Is Supported By The Specification As Understood By One Of Ordinary Skill In The Art

Claims 20, 23, and 24 are rejected as failing to comply with the written description requirement because the Office Action suggests that “waterless cooking at sub-atmospheric pressure” was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the Applicants had possession of the claimed invention and that Applicants did not point out where such subject matter was supported by the claims. (Office Action, p. 2.) Regarding this issue, the Office Action states:

Applicant’s attention is drawn to the BPAI Decision of 2/21/07 which addresses this issue (page 5). It points out that a specific definition must be found in the application, otherwise a term is given its broadest reasonable interpretation. Also, it points out that the application does not support “sub-atmospheric pressure.”

(*Id.*, p. 5.) However, it is respectfully submitted that the Office Action is misquoting the BPAI Decision, which never said that a specific definition “must” be found in the specification.

(*See* BPAI Decision, pp. 5-6.) The BPAI Decision simply stated:

Claims must be read in view of the specification of which they are a part, and the specification is the single best guide to the meaning of a disputed term While Declarant Cappadona states that waterless cooking takes place under sub-atmospheric or partial vacuum conditions (Declaration 2-3), this statement is conclusory and unsupported by evidence.

(*Id.*, pp. 5-6.) The BPAI Decision acknowledges that the Applicants’ specification refers to “waterless cooking” (*Id.*, p. 5.) – the Decision merely stated the specification did not define “waterless cooking” and that the previous record failed to support the definition that one of ordinary skill understands “waterless cooking” to include sub-atmospheric cooking. (*Id.*, pp. 5-6.)

Claim 20 and 23 now positively recite that waterless cooking requires sub-atmospheric pressure. Support is found in the Applicants’ specification that discloses “[t]he pan 10 may be

used for waterless cooking.” (Specification, p. 3, line 18.) In the previous response dated April 23, 2007 (“the April 23 Response”), Applicants provided objective evidence that one of ordinary skill, when reading Applicants’ specification, would clearly understand the term “waterless cooking” in the specification to mean cooking at sub-atmospheric pressure.

Section 2111 of the Manual of Patent Examining Procedure sets the guidelines for interpretation claim language:

The broadest reasonable interpretation of the claims *must also be consistent with the interpretation that those skilled in the art would reach.*

(MPEP § 2111, emphasis added). The Office Action is ignoring the second requirement of Section 2111 – that the claim be interpreted based on how one of ordinary skill would understand the specification and claims.

In the April 23 Response, Applicants supplied additional, objective evidence via two prior art patents that show that one of ordinary skill, when reading Applicants’ specification, would understand the broadest reasonable interpretation of waterless cooking includes sub-atmospheric pressure. Accordingly, the claim language “waterless cooking at sub-atmospheric pressure” is supported by the Applicants’ Specification as understood by one of ordinary skill, and it is requested that the rejections under Section 112, first paragraph, be withdrawn.

V. Claims 20 To 22 Were Not Obvious Over Barbour In View Of Bosch Because Applicants Have Objective Evidence Of Commercial Success Of The Claimed Invention

Claims 20 to 23 stand rejected as being obvious over Barbour in view of Bosch. (Office Action, pp. 3-5.) Submitted concurrently with this response is a declaration of Mr. Thomas Verrette, the Chief Financial Officer of Carico International, Inc. (“Carico”), which sells Ultra Tech waterless cookware including all elements of claims 20 to 22 (as well as claims 24 to 26 and 29 to 30) (“the claimed cookware”). The Verrette Declaration establishes:

(1) Carico does not advertise the claimed cookware. (Declaration, ¶ 2.) The claimed cookware is only sold through direct marketing (*i.e.*, door-to-door sales) and not through retail sales in a store. (*Id.*) When the claimed cookware was introduced in 2000, no additional promotional efforts were undertaken other than normal promotional efforts in Carico's direct selling business. (*Id.*, ¶¶ 5 and 10.) With direct selling, the claimed cookware is promoted via word-of-mouth based on product performance and not advertising. (*Id.*, ¶ 2.)

(2) Carico exhibited a sales growth of about 147 percent in 2000 (the year the claimed cookware was introduced) over the prior year when the claimed cookware was not sold. (*Id.*, ¶ 5.) The only major difference being the claimed cookware and the prior cookware was the claimed features. (*Id.*, ¶ 12.) During the same time frame, the overall direct selling market only grew about 4 percent. (*Id.*, ¶ 8.)

(3) Carico has also exhibited an increase of cookware sales revenue per salesperson (*i.e.*, independent of the number of sales people) since the introduction of the claimed cookware. (*Id.*, ¶ 9.)

Accordingly, based on the objective evidence of commercial success, Applicants respectfully request the withdrawal of the rejection to claims 20 to 22.

VI. Claims 23 Was Not Obvious Over Barbour In View Of Bosch And Further In View Of Hupf Because Applicants Have Objective Evidence Of Commercial Success Of The Claimed Invention

Claim 23 stands rejected as obvious over Barbour in view of Bosch and further in view of US 6,004,000 ("Hupf"). The evidence of commercial success discussed above in Section V is also relevant to the method of claim 23. Section V is incorporated herein by reference. Accordingly, based on the objective evidence of commercial success, Applicants respectfully request the withdrawal of the rejection to claim 23.

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VII. Conclusion

The Applicants respectively request entry of the present amendment and Declaration, reconsideration, and withdrawal of the rejections to claims 20 to 26 and 29-30, and this application passed to allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

Dated: January 31, 2008

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